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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 183

HENRY W. TAFT AND JULIA W. S. TAFT, PETITIONERS

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 10) is reported at 40 B. T. A. 229. The *per curiam* opinion of the Circuit Court of Appeals (R. 37) is reported in 111 F. (2d) 145.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 8, 1940 (R. 37–38). The petition for a writ of certiorari was filed June 26, 1940, and was granted October 11, 1940, limited to the

second question presented (R. 39). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, when husband and wife file a joint income-tax return, the limitation on the deduction for contributions to charities to 15 percent of the taxpayer's net income must be computed with reference to the separate net incomes of the husband and wife, or whether it may be computed on their combined net income.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix.

STATEMENT

The petitioners are husband and wife, and reside in New York City, New York. For each of the calendar years 1934 and 1935 they filed joint income-tax returns (R. 11).

Petitioners' return for 1934 showed an aggregate net income of $83,682.99. In arriving at this net income a deduction of $2,852 was taken from gross income on account of contributions made by both petitioners during the year to charities. Of this sum deducted, $1,477 represented contribu-

tions made by the wife, and the balance represented contributions made by the husband. The wife's net income for the year, computed without reference to such contributions, was $12.10 (R. 11).

The petitioners' return for 1935 showed an aggregate net income of $92,374.59, after deducting $2,715.80 for charitable contributions made in the year. Of this latter sum, $1,545.80 represented contributions made by the wife and the balance contributions by the husband. The wife's net income in 1935, computed without reference to such contributions, was $15.30 (R. 11).

In auditing the returns the Commissioner ruled that the deductions for charitable contributions claimed on account of the wife's contributions must be reduced to 15 percent of her net income. The net result of the Commissioner's adjustments was to reduce the deduction for the wife's contributions in 1934 from $1,477 to $1.81, and the deduction for her contributions in 1935 from $1,545.80 to $2.30 (R. 11–12). The resulting deficiencies against the petitioners were $722.79 for the year 1934 and $827.17 for the year 1935 (R. 6–9).

The Board of Tax Appeals sustained the Commissioner (R. 10–15). The Board's decision was affirmed, *per curiam,* by the Circuit Court of Appeals for the Second Circuit upon the authority of the decision of that court in *Pierce* v. *Helvering,* 100 F. (2d) 397 (R. 37).

ARGUMENT

The question presented in this case is in its more general aspects the same as that presented in *Helvering* v. *Walter C. Janney and Pauline F. M. Janney,* No. 36, this Term, to be argued immediately preceding this case. Hence we adopt for this case the general argument made on behalf of the Commissioner of Internal Revenue in the *Janney* case, and discuss here only the questions which are either peculiar to this case or are raised by the petitioners in this case and are not discussed in the brief for the Commissioner in the *Janney* case.

This case arises under Sections 23 (o) and 51 (b) of the Revenue Act of 1934. Section 23 (o) provides that charitable contributions shall be allowed as deductions to an amount which "does not exceed 15 per centum of the taxpayer's net income as computed without the benefit of this subsection." Section 51 (b) permits a husband and wife to make a single joint return "in which case the tax shall be computed on the aggregate income." Provisions equivalent to those of Section 23 (o) of the 1934 Act have been included in every revenue act since that of 1918. The provision quoted from Section 51 (b) of the 1934 Act appears in every revenue act since that of 1921.

In the brief for the Commissioner in the *Janney* case it is argued that even though a husband and

wife file a joint return, pursuant to their privilege to do so, this does not make them a single taxpayer for the purpose of computing deductions, and that only those deductions to which either the husband or the wife, separately considered, is entitled under the law, may be taken. If that principle be accepted it is plainly applicable to the present case, and requires that the limitation on the deduction for contributions to charities to 15 percent of the taxpayer's net income must be computed with reference to the husband's and wife's separate net incomes, and not on their combined net income. This result is further indicated here by the wording of Section 23 (o). It limits the allowable deduction to 15 percent of "the taxpayer's net income", and that is a limitation based on the income of the individual taxpayer. Had Congress intended that the limitation be measured by the "taxpayers' net income" where separate taxpayers file a joint return, it could easily have so stated. But, on the contrary, Congress, ever since the Revenue Act of 1918, has employed the term "taxpayer's net income".

Further, whatever doubt might attend the construction of Section 23 (o) if it stood alone is resolved in favor of the interpretation above urged by Article 23 (o)–1 of Regulations 86, promulgated under the Revenue Act of 1934. That article provides in part:

> Whether a husband and wife make a joint return or separate returns, the 15 percent limitation on the deduction for contributions or gifts is based on the separate net income (computed without regard to such contributions or gifts) of the spouse making the contributions or gifts.

This language has been retained in Articles 23 (o) (1) of Regulations 94 and 101, promulgated, respectively, under the Revenue Acts of 1936 and 1938, and in Section 19.23 (o)–1 of Regulations 103, promulgated under the Internal Revenue Code. And, as has been stated, the provisions of Section 23 (o) of the 1934 Act, which this regulation construes, have been preserved in the subsequent statutes. The construction given the statutory provision by the regulation has therefore received the tacit approval of Congress. *Helvering* v. *Wilshire Oil Co.*, 308 U. S. 90; *Helvering* v. *Winmill*, 305 U. S. 79, 83; *Hassett* v. *Welch*, 303 U. S. 303; *Old Mission Co.* v. *Helvering*, 293 U. S. 289, 293, 294; *United States* v. *Dakota-Montana Oil Co.*, 288 U. S. 459, 466; *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488.

It cannot be denied that Article 23 (o)–1 of Regulations 86 squarely covers the present case. Petitioners assert, however, that it is inconsistent with the administrative interpretation of the statute which prevailed prior to its promulgation. This

Court has recently pointed out that the rule making power of the Treasury is a continuing one, and that the Treasury may apply to a statutory provision reenacted in a new Act an interpretation different from that which it applied to the same provision in former Acts. *Helvering* v. *Wilshire Oil Co.*, 308 U. S. 90, 97, 100–101. Hence, petitioners' contention that Article 23 (o)–1 represented a change from the prior administrative construction could not prevail, in view of subsequent congressional approval of the new regulation, even if it were well founded.

But the claim is not well founded. The only regulations pertinent to the question here at issue which antedated Article 23 (o)–1 of Regulations 86 were the predecessors of Article 51–1 of Regulations 86. That regulation reads in part:

> If the income of each is included in a single joint return, the tax is computed on the aggregate income and all deductions and credits to which either is entitled shall be taken from such aggregate income.

These provisions first appeared in Article 401 of Regulations 62, promulgated under the Revenue Act of 1921, and have been continued in all Treasury Regulations issued since. As fully pointed out in the brief for the Commissioner in the *Janney* case, this regulation supports the argument that

a husband and wife do not lose their identities as separate individual taxpayers by filing a joint return. The crucial language is "all deductions * * * to which either is entitled shall be taken from such aggregate income." The inference from this language is that a deduction is allowable in a joint return only as one spouse or the other, separately considered, would be entitled to it. And since the wife in the instant case, as a separate individual taxpayer, is not entitled to deduct more than 15 percent of her net income for charitable contributions, the amounts in excess of 15 percent which were claimed as deductions on the joint returns were properly disallowed. Thus Article 23 (o)–1 of Regulations 86, far from departing from the prior regulations, was but an amplification and specific application of the general principle already laid down in the regulations.

The petitioners also place great reliance upon Sol. Op. 90, Cum. Bul. No. 4, p. 236 (1921). There the Solicitor of Internal Revenue ruled that under the 1918 Act (which did not provide how the tax was to be computed if a joint return was made) the tax of a husband and wife filing a joint return was to be computed on their net aggregate income, and that the deductions of one spouse, if they exceeded his or her income, could be deducted from the gross income of the other. That opinion, in other words,

upheld the right of husband and wife to pool their deductions and items of income if a joint return was made. Congress approved this view, and inserted in the 1921 Act the provision, retained since, that in the case of joint returns the tax should be computed on the aggregate income. See S. Rep. No. 275, 67th Cong., 1st Sess., p. 17; H. Rep. No. 350, 67th Cong., 1st Sess., p. 13; Hearings before the Senate Comittee on Finance on H. R. 8245, 67th Cong., 1st Sess., p. 74. But the question discussed by the Solicitor and dealt with by Congress was the right to pool deductions in a joint return; here the question is whether the two spouses are to be treated as one person for the purpose of ascertaining what deductions may be entered in such a return. Sol. Op. 90 throws no light on that question. The passages from texts which the petitioners quote (Br. 10) likewise show that the petitioners confuse the right to pool deductions with the question whether deductions are to be computed as if husband and wife were one person; the quoted passages deal only with the former.

Similarly mistaken is petitioners' reliance (Br. 7–8) upon a supposed concession by the Government in *Van Vleck* v. *Commissioner*, 80 F. (2d) 217 (C. C. A. 2d), certiorari denied, 298 U. S. 656. There, in the course of an opinion dealing with a

different question, the court recited that the husband's net loss for 1930 had been deducted from the wife's income in that year, and that the right to take that deduction had not been questioned. 80 F. (2d) at 217, 218. Petitioners cite the allowance of this deduction as inconsistent with the provisions of a predecessor of Article 51–1 of Regulations 86. The loss of the husband referred to in the *Van Vleck* opinion was a "net business loss" sustained in the husband's regular business of buying and selling securities, and the 1928 Act, under which that case arose, contained no limitation on the deduction of such a loss. Hence the case, in that aspect, involved but a pooling of deductions and the right to do so was sustained, not denied, by the regulation. And the court so recognized. 80 F. (2d) at 218.

I. T. 1997, III–1 Cum. Bull. 149 (1924), also relied on by petitioners, was revoked by I. T. 2824, XIII–2 Cum. Bul. 293 (1934). Further, as explained at pp. 6–7, of the brief for the Commissioner in the *Gaines* case, No. 113, argued herewith, the position taken by the Bureau in I. T. 1997 was not inconsistent with adherence to the general principle that husband and wife remain separate persons for purposes of computing deductions in a joint return.

CONCLUSION

For the reasons stated in the brief for the Commissioner in the *Janney* case and herein it is submitted that the decision below is correct and should be affirmed.

Respectfully submitted.

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NOVEMBER 1940.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 4 per centum of the amount of the net income in excess of the credits against net income provided in section 25. (U. S. C., Title 26, Sec. 11.)

SEC. 12. SURTAX ON INDIVIDUALS.

* * * * *

(b) *Rates of Surtax.*—There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

* * * * *

(U. S. C., Title 26, Sec. 12.)

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(o) *Charitable and Other Contributions.*—In the case of an individual, contributions or gifts made within the taxable year to or for the use of:

* * * * *

to an amount which in all the above cases combined does not exceed 15 per centum of the taxpayer's net income as computed with-

out the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary. * * *

* * * * *

(U. S. C., Title 26, Sec. 23.)

The provisions of Sections 214 (a) (11) of the Revenue Acts of 1918 (c. 18, 40 Stat. 1057) and 1921 (c. 136, 42 Stat. 227), Sections 214 (a) (10) of the Revenue Acts of 1924 (c. 234, 43 Stat. 253) and 1926 (c. 27, 44 Stat. 9), Sections 23 (n) of the Revenue Acts of 1928 (c. 852, 45 Stat. 791) and 1932 (c. 209, 47 Stat. 169), and Section 23 (o) of the Revenue Acts of 1936 (c. 690, 49 Stat. 1648) and 1938 (c. 289, 52 Stat. 447), and the Internal Revenue Code (c. 1, 53 Stat. 12), insofar as here material are the same as the provisions of Section 23 (o) of the Revenue Act of 1934, above quoted.

SEC. 51. INDIVIDUAL RETURNS.

(a) *Requirement.*—The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this title—

* * * * *

(b) *Husband and Wife.*—If a husband and wife living together have an aggregate net income for the taxable year of $2,500 or over, or an aggregate gross income for such year of $5,000 or over—

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income. (U. S. C., Title 26, Sec. 51.)

The provisions of Sections 223 of the Revenue Acts of 1921, 1924, and 1926, and Sections 51 of the Revenue Acts of 1928, 1932, 1936, and 1938, and of the Internal Revenue Code, insofar as here material are the same as the provisions of Section 51 of the Revenue Act of 1934, above quoted.

Treasury Regulations 86, promulgated under the Revenue Act of 1934:

> ART. 23 (o)–1. Contributions or gifts by individuals.—
>
> * * * * *
>
> Whether a husband and wife make a joint return or separate returns, the 15 percent limitation on the deduction for contributions or gifts is based on the separate net income (computed without regard to such contributions or gifts) of the spouse making the contributions or gifts. (See article 51–1.)

Articles 23 (o)–1 of Regulations 94 and 101, promulgated under the Revenue Acts of 1936 and 1938, respectively, and Section 19.23 (o)–1 of Regulations 103, promulgated under the Internal Revenue Code, contain language identical with the above excerpt from Article 23 (o)–1 of Regulations 86.

> ART. 51–1. Individual returns.—
>
> * * * * *
>
> A husband and wife living together for the entire year need make no returns unless their aggregate gross income for the taxable year is at least $5,000, or their aggregate net income is at least $2,500. If their aggregate net income for the taxable year is $2,500 or more, or their aggregate gross income is $5,000 or more, either each must make a return, or the income of each must be included

> in a single joint return. * * * If the income of each is included in a single joint return, the tax is computed on the aggregate income and all deductions and credits to which either is entitled shall be taken from such aggregate income. * * *
>
> * * * * * *

Articles 401 of Regulations 62, 65, and 69, promulgated under the Revenue Acts of 1921, 1924, and 1926, respectively, Articles 381 of Regulations 74 and 77, promulgated under the Revenue Acts of 1928 and 1932, respectively, and Article 51–1 of Regulations 94, promulgated under the Revenue Act of 1936, contain provisions which are the same as the above-quoted provisions of Article 51–1 of Regulations 86. The quoted provisions are retained in substance, with some amplification, in Article 51–1 (b) of Regulations 101, promulgated under the Revenue Act of 1938, and in Section 19.51–1 of Regulations 103, promulgated under the Internal Revenue Code.

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SUPREME COURT OF THE UNITED STATES.

No. 183.—October Term, 1940.

Henry W. Taft and Julia W. S. Taft, Petitioners, *vs.* Guy T. Helvering, Commissioner of Internal Revenue. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[December 9, 1940.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Petitioners, husband and wife, filed joint income-tax returns for the years 1934 and 1935. In computing their aggregate net income under Section 51(b) of the Revenue Act of 1934,[1] they made deductions of their combined charitable contributions.[2] The Commissioner ruled that the deductions on account of the wife's charitable contributions should be reduced to 15 per cent of her separate net income and deficiences were determined accordingly. The Board of Tax Appeals sustained the Commissioner (40 B. T. A. 229) and the Circuit Court of Appeals affirmed. 111 F. (2d) 145.

Because the question is cognate to that presented in the cases of *Helvering* v. *Janney*, No. 36, and *Gaines* v. *Helvering*, No. 113, decided this day, we granted certiorari. October 14, 1940.

The provision for joint returns in Section 51(b) of the Revenue Act of 1934 was in substantially the same form as the corresponding provision in the prior revenue acts from 1921. The import of that provision is that in making a joint return the husband and wife should report their aggregate gross income and could combine their deductions in reporting their aggregate net income upon which the tax was to be computed. That was the construction placed upon the original provision for joint returns, in the Revenue Act of 1918, by the Solicitor of Internal Revenue. He said in his ruling: "If a single joint return is filed it is treated as the return

[1] 48 Stat. 697.

[2] Section 23(o), 48 Stat. 690.

of a taxable unit and the net income disclosed by the return is subject to both normal and surtax as though the return were that of a single individual. In cases, therefore, in which the husband or wife has allowable deductions in excess of his or her gross income, such excess may, if joint return is filed, be deducted from the net income of the other for the purpose of computing both the normal and surtax".[3] We think that this was the intention of Congress in enacting the Act of 1921[4] and the later acts containing the same provision for joint returns. We think that it was also the fair import of the Treasury Regulations under the Act of 1921 and of subsequent regulations prior to 1934.[5]

Respondent places emphasis on the phrasing of Article 401 of Regulations 62 under the Act of 1921, that "in a single joint return, the tax is computed on the aggregate income and all deductions and credits to which either is entitled shall be taken from such aggregate income". The argument stresses the words "to which either is entitled" and it is urged that each spouse is entitled only to deduct 15 per cent of his or her separate net income. But we think that this is an inadmissible construction of the statute and is not a necessary construction of the regulation. Such a construction is inconsistent with the premise of the Solicitor's opinion, above mentioned, that a joint return "is treated as the return of a taxable unit" and the tax is to be laid as though the return were that "of a single individual". The more specific language of the provision in the Act of 1921, which for the present purpose is the same as that in the Act of 1934, affords a stronger basis for this conclusion. It provides specifically for the inclusion of the income of each spouse "in a single joint return" and in that case that "the tax shall be computed on the aggregate income". The principle that the joint return is to be treated as the return of a "taxable unit" and as though it were made by a "single individual" would be violated if in making a joint return each spouse were compelled to calculate his or her charitable contributions as if he or she were making a separate return. The principle of a joint return permitted aggre-

[3] Sol. Op. 90, Cum. Bull. No. 4, p. 236 (1921). See Helvering *v.* Janney, No. 36, decided this date.

[4] House Rep. No. 350, 67th Cong., 1st Sess.; Sen. Rep. No. 275, 67th Cong., 1st Sess.

[5] Treasury Regulations Nos. 65 and 69, Art. 401; Regulations Nos. 74 and 77, Art. 381.

gation of income and deductions and thus overrode the limitations incident to separate returns. We find no indication in Article 401 of Regulation 62 under the Act of 1921 of any intention to depart from the Solicitor's view as to the purport of the statute.

In 1935, by Article 23(o)-1 of Treasury Regulations 86, the Department sought to require a husband and wife, whether they make "a joint return or separate returns", to base their deduction for charitable contributions on the separate net income of the spouse making them. We are of the opinion that under the Revenue Act of 1934, taken with the meaning we think it had when enacted, petitioners were entitled to the combined deductions they claimed, and that the departmental regulation to the contrary was ineffective to deprive them of that right.

The judgment of the Circuit Court of Appeals is reversed.

Mr. Justice ROBERTS took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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